

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 19.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.1073 of 2014

1.Murugammal
2.Minor.Uma
3.Minor. Govidaraj
4.Minor. Varadharaj
5.Muthammal .. Petitioners/Appellants

(2 to 4 minor appellants are
represented by their natural guardian
and mother, Murugammal

Versus

1. P.Chinna Naidu
2. The Divisional Manager
The United Insurance Company Ltd,
T.K.M. Complex,
Katpadi Road, Vellore. ..Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act,
1988 against the Judgment and Decree dated 20.08.2010 made in
M.C.O.P.No.830 of 2007 on the file of the Motor Accident Claims
Tribunal, (Principal District Court), Vellore.

For Appellant : Mr.C.Prabakaran

For Respondents: No Appearance for R-1
Mr.D.Bhaskaran for R-2

J U D G M E N T

The wife, three minor children and the mother of the
deceased, who are aged 35, 15, 13, 11 and 62 respectively, have
filed the claim petition for compensation, before the claims
tribunal, in M.C.O.P.No. 830 of 2007, in respect of death of one
Saminathan, aged 40 years, an agriculturist in addition to doing
coconut business, earning a sum of Rs.20,000/- per month.

2. The claims Tribunal, on considering the oral and documentary evidence awarded a sum of Rs.3,74,000/- as compensation, along with interest @ 7.5% per annum from the date of petition till the date of deposit. The break up details of the award are as under :-

Loss of income	-	Rs.3,51,000/-
Loss of consortium	-	Rs. 15,000/-
to the first claimant		
Transportation	-	Rs. 3,000/-
Funeral expenses	-	Rs. 5,000/-

		Rs.3,74,000/-

3. Learned counsel appearing for the appellants/claimants submit that the compensation awarded by the is on the far lower side. The monthly income taken is on the very low side and the documentary evidence has not been appreciated in the right perspective. Further, no amount has been awarded under the head love and affection and, therefore, the compensation awarded should be enhanced.

4. Heard the learned counsel appearing for the 2nd respondent on the above contentions. It is submitted by the learned counsel for the 2nd respondent that the compensation claimed by the claimants is only to the extent of Rs.2,50,000/-. However, erroneously the Tribunal has awarded a higher compensation and, therefore, the claimants/appellants cannot have any grievance and, therefore, no interference is called for with the order passed by the Tribunal.

5. Insofar as the contention pertaining to enhanced compensation awarded by the Tribunal and enhancement sought for before this Court, the learned counsel for the 2nd respondent may be technically right in his contention. But that cannot deter this Court in rendering substantial justice on the facts and circumstances of the case. It is for the Court to see, whether on the facts and circumstances and in the light of the evidence available on record, the compensation awarded by the Tribunal is just and reasonable or whether the same needs enhancement/reduction.

6. From a perusal of the award it is seen that the Tribunal has fixed the monthly income at Rs.3,000/- in the absence of any documentary proof to substantiate the monthly income. There is no dispute with regard to the age of the deceased, which has been fixed as 45 years. After deduction 1/4th towards the personal expenses and adopting a multiplier of 13, the Tribunal quantified the compensation under the head loss of income at

Rs.3,51,000/- (Rs.2250 X 12 X 13).

7. A perusal of the materials available on record reveals that the deceased was a member of Labour Society of Coconut Tree climber. Ex.P-7 receipts and payment of subscription of the deceased, as a member of the said Society of Coconut Tree climber has been marked. Hence, it cannot be said that there is no documentary evidence to show the employment of the deceased and, therefore, the income fixed notionally at Rs.3,000/= per month is unsustainable. Therefore, this Court is of the considered view that the income of the deceased needs to be properly quantified in order to arrive at the loss of income to the family.

8. The accident has happened in the year 2007. The oral evidence adduced on the side of the claimants reveal that the deceased was doing agricultural work and also doing the work of coconut tree climber. The deceased is survived by his wife, children, 3 in number and mother, in all five members. Therefore, to maintain such a large family, the deceased would definitely need to have earned a substantial sum. Therefore, this Court is of the considered view that the monthly income could be safely fixed at Rs.5,000/= per month. To the said income, 30% needs to be added as future prospective income of the deceased, which works out to Rs.6500/=. Deducting 1/4th towards the personal expenses of the deceased, and adopting a multiplier of 13, the total compensation payable under the head loss of income comes to Rs. Rs.7,60,500/- (Rs.4875 X 12 X 13).

9. The amount of compensation awarded under the head loss of consortium is on the lower side, considering the age of the spouse being 35. Accordingly, this Court enhances the compensation payable under the head loss of consortium to Rs.1,00,000/-. It is seen from the award that no amount has been awarded under the head loss of love and affection. The children are of tender age and they have lost the love, affection and guidance of their father, which is very essential once they reach the adulthood. The spouse is also deprived of the love and affection that she would have received from her husband and also the safety and security of his presence. Definitely they are entitled to compensation under the head. Accordingly, each of the children is entitled to a compensation of Rs.50,000/= and the mother is entitled to a compensation of Rs.25,000/- under the head love and affection. Funeral expenses is enhanced to Rs. 25,000/- - The compensation awarded under the head transportation is confirmed. Accordingly, the total compensation is enhanced as under :-

Loss of income - Rs.7,60,500/-
Loss of consortium - Rs.1,00,,000/-
to the first claimant

Loss of Love & Affection - Rs.1,50,000/-
To minor children
(Rs.50,000 X 3)

Loss of Love & Affection - Rs. 25,000/-
to spouse
Transportation - Rs. 3,000/-
Funeral expenses - Rs. 25,000/-

Total Rs.10,63,500/-

10. In the result, this appeal is allowed and the compensation awarded by the Tribunal is enhanced from Rs.3,74,000/- to Rs.10,63,500/-, with interest @ 7.5% per annum from the date of petition till the date of deposit. The finding with regard to pay and recover stands confirmed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

11. The Insurance Company is directed to deposit the entire amount of compensation as enhanced by this Court above along with accrued interest and costs, less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount as per the ratio of apportionment, as indicated by the tribunal to the various claimants directly to their bank account through RTGS within a period of two weeks thereafter. Insofar as compensation awarded to the minor claimants is concerned, the order of deposit passed by the Tribunal is confirmed. Court fees due, shall be paid before obtaining copy of the Judgment (by the claimant).

Sd/-
Assistant Registrar(CS III)
//True Copy//
Sub Assistant Registrar

arr/GLN

To

1. The Motor Accidents Claims Tribunal,
Principal District Judge,Vellore.

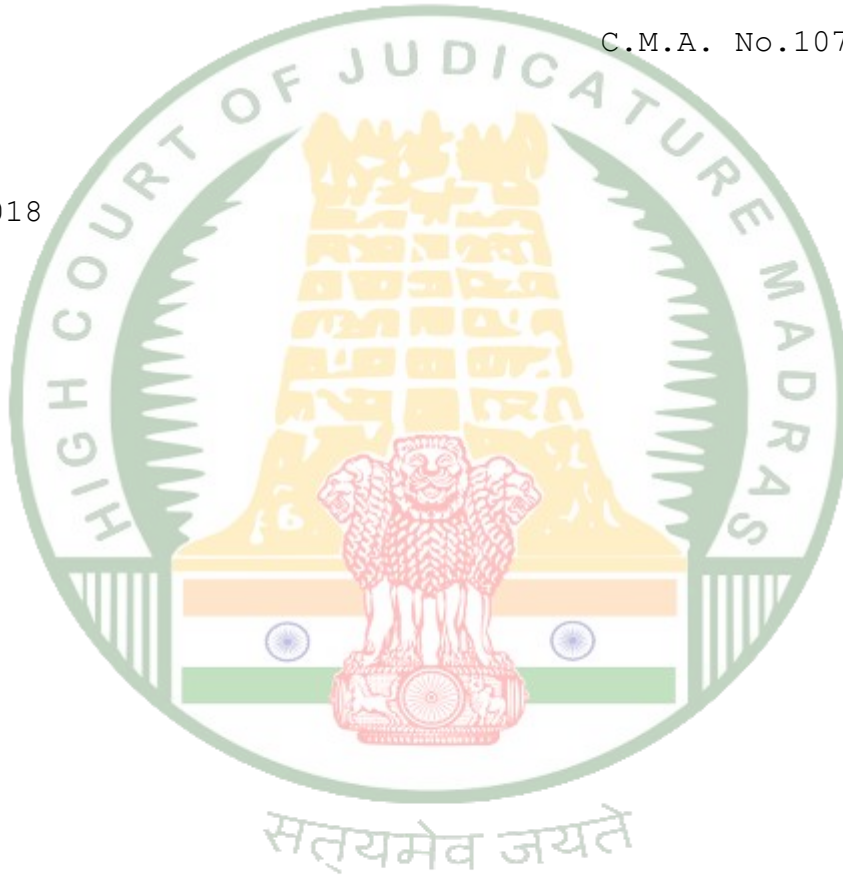
2. The Section Officer, VR Section,
High Court, Madras.

+1 cc to Mr.C.Prabakaran Advocate sr 3871

+1 cc to Mr.D.Bhaskaran Advocate sr 4126

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